BEST AVAILABLE COPY

No. 85-305

Supreme Court, U.S.
FILED
SEP 21 1985
JOSEPH F. SPANIOL, JR.
CLERK

In the
Supreme Court of the United States

October Term, 1985

MICHAEL E. FRYZEL, Director,
Department of Financial Institutions,
Petitioner,

vs.

CASH CURRENCY EXCHANGE, INC., et al.,
Respondents.

RESPONSE OF CASH CURRENCY EXCHANGE, INC., TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Abraham Brustein
Nicholas G. Dozoryst II*
53 West Jackson Blvd.
Suite 1250
Chicago, Illinois 60604
Attorneys for Respondent Cash Currency Exchange, Inc.

Of Counsel
Dozoryst, Brustein, Neuman & Marks
53 West Jackson Blvd.
Suite 1250
Chicago, Illinois 60604

* Counsel of Record

The Scheffer Press, Inc.—(312) 263-6850

QUESTIONS PRESENTED FOR REVIEW

1. Whether a community currency exchange, licensed by an operating in the State of Illinois, is precluded from filing for Chapter 11 reorganization either by operation of section 109(b)(2) of the Bankruptcy Code (11 U.S.C. section 109(b)(2)) or considerations of comity.

2. Whether a receiver appointed pursuant to section 15.1 of the Illinois Currency Exchange Act (Ill. Rev. Stat. Ch. 17, para. 4825) is a custodian within the meaning of sections 101(10) and 543 of the Bankruptcy Code (11 U.S.C. sections 101(10), 543).

3. Whether the Seventh Circuit Court of Appeals, after finding that a community currency exchange may be a debtor under the Bankruptcy Code, erred in further holding that there is no federal policy which compels a bankruptcy court from abstaining from exercising jurisdiction over the respondents' Chapter 11 bankruptcy cases.

PARTIES

The Respondents in this Petition, as set forth in the caption as "CASH CURRENCY EXCHANGE, INC., et al." include DONALD C. SHINE, RECEIVER; the 33 debtor community currency exchanges located in Illinois: 59th & HALSTED CURRENCY EXCHANGE, INC., PULASKI JACKSON CURRENCY EXCHANGE, INC., DIVISION DAMEN CURRENCY EXCHANGE, INC., LAKE LARAMIE CURRENCY EXCHANGE, INC., 147th & LOOMIS CURRENCY EXCHANGE, INC., NORTH HALSTED CURRENCY EXCHANGE, INC., CICERO CHICAGO CURRENCY EXCHANGE, INC., OGDEN KEDZIE CURRENCY EXCHANGE, INC., ROOSEVELT AUSTIN CURRENCY EXCHANGE, INC., LAKE PULASKI CURRENCY EXCHANGE, INC., CHICAGO CENTRAL CURRENCY EXCHANGE, INC., ZENITH CURRENCY EXCHANGE, INC., BELMONT KIMBALL CURRENCY EXCHANGE, INC., KEDZIE CARROLL CURRENCY EXCHANGE, INC., BROADWAY LAWRENCE CURRENCY EXCHANGE, INC., 79th & EXCHANGE CURRENCY EXCHANGE, INC., JACKSON HOMAN CURRENCY EXCHANGE, INC., 51st & ASHLAND CURRENCY EXCHANGE, INC., 85th & BURLEY CURRENCY EXCHANGE, INC., 69th & ASHLAND CURRENCY EXCHANGE, INC., LARAMIE LAKE CURRENCY EXCHANGE, INC., MADISON CALIFORNIA CURRENCY EXCHANGE, INC., MADISON OAK PARK CURRENCY EXCHANGE, INC., ASHLAND GRAND CURRENCY EXCHANGE, INC., MADISON DAMEN CURRENCY EXCHANGE, INC., CENTRAL DIVISION CURRENCY EXCHANGE, INC., ROOSEVELT DAMEN CURRENCY EXCHANGE, INC., CICERO ARMITAGE CURRENCY EXCHANGE, 51st & HALSTED CURRENCY EXCHANGE, INC., CHICAGO CLARK CURRENCY EXCHANGE, INC., MILWAUKEE CLARK CURRENCY EXCHANGE, INC., 43rd & COTTAGE GROVE CUR-

RENCY EXCHANGE, INC., and BREMENTOWNE CURRENCY EXCHANGE, INC., TRAVELERS' EXPRESS CO., and UNSECURED CREDITORS' COMMITTEE.

The Petitioner is MICHAEL E. FRYZEL, Director of the Department of Financial Institutions of the State of Illinois.

TABLE OF CONTENTS

	PAGE
Questions Presented for Review	i
Parties	ii
Table of Authorities	vi
Opinions Below	1
Jurisdiction	2
Statutory Provisions Involved	2
Introductory Statement	2
Statement of Case	2
Reasons for Denying the Request	4
(A) Introduction	4
I. The Decision of The Seventh Circuit Court of Appeals is Correct and not Subject to Serious Dispute	5
II. The Decision of The Seventh Circuit Court of Appeals is Not in Conflict with any Decision of Another Court of Appeals on any Issue Presented Before it or Over Which Further Review is Sought	6
III. Further Review of the Decision of the Seventh Circuit Court of Appeals will Undermine Rather than Advance Principles of Federalism	8
IV. Allowing Cash Currency Exchange, Inc., to Liquidate or Reorganize in Bankruptcy does not Negatively Affect the Policies the Director Articulates as a Basis for Granting the Writ	11

PAGE

V. Further Review is Unwarranted Since the Consequences of the Relief Requested by the Director will Render the Bankruptcy System Unworkable 12

VI. The Director's Request for the Writ is Premised Upon Assumptions and Generalizations for Which no Authority is Cited 13

Conclusion 14

Appendix 1a

PAGE

TABLE OF AUTHORITIES

Cases

Burford v. *Sun Oil Co.*, 319 U.S. 315 (1943) 6

First American Bank & Trust Co. v. *George*, 540 F.2d 343 (8th cir.) cert. denied 429 U.S. 1011 (1976) 7

Israel-British Bank (London) Ltd. v. *Fed. Dep. Ins. Corp.*, 536 F.2d 509 (2nd cir.) cert. denied 429 U.S. 978 (1976) 6,7

In re Covey, 650 F.2d 877 (7th cir. 1981) 6

Woolsey v. *Security Trust Co.*, 74 F.2d 334 (5th cir. 1935) 7

Constitutional Provisions

U.S. Constitution, art. I, sec. 8, cl. 4 8

U.S. Constitution, art. VI, cl. 2 8

Statutory Provisions

11 U.S.C. Section 102(3) 9

11 U.S.C. Section 109 ..... passim

11 U.S.C. Section 305 6,9

11 U.S.C. Section 22, repealed 1979 7,9

Ill. Rev. Stat. (1983) ch. 17 paras. 4825-4830 3,11

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

No. 85-305

MICHAEL E. FRYZEL, Director,
Department of Financial Institutions,
Petitioner,

vs.

CASH CURRENCY EXCHANGE, INC., et al.,
Respondents.

RESPONSE OF CASH CURRENCY EXCHANGE, INC., TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

OPINIONS BELOW

The opinion of United States Court of Appeals for the Seventh Circuit was entered on May 21, 1985, and has been officially reported at 762 F.2d 542. The opinion of the United States District Court for the Northern District of Illinois is reported at 37 Br 617 (D. C. 1984). The opinions are reprinted in the petitioner's appendix.

JURISDICTION

Cash Currency Exchange, Inc. adopts the jurisdictional statement of the petitioner.

STATUTORY PROVISIONS INVOLVED

In addition to the statutory provisions stated in the Petition, the following statutory provisions are involved and are reprinted in the appendix contained within this volume:

United States Constitution, art. I, sec. 8, cl. 4
United States Constitution art. VI, cl. 2
11 USC section 102(3)
11 USC section 109
11 USC section 305

INTRODUCTORY STATEMENT

Cash Currency Exchange, Inc., is the first named of the fifty-seven debtors which filed bankruptcy petitions on February 10, 1973. Hereafter, any reference to Cash Currency Exchange, Inc. shall be a reference to all fifty-seven debtor respondents which are parties to the petition.

STATEMENT OF THE CASE

Cash Currency Exchange, Inc. adopts the statement of the case presented by the Petitioner (hereinafter, "the Director") with the following addition.

On February 10, 1983, fifty-seven related Chapter 11 reorganization cases were commenced by the filing of voluntary petitions in the United States Bankruptcy Court for the Northern District of Illinois, where those cases are pending under joint administration. Thirty-three of the debtors were licensed community currency ex-

changes and are parties to this Petition. Eleven of the debtors were currency exchanges duly authorized to do business from locations in Indiana, Michigan, Missouri, Ohio, Wisconsin and the District of Columbia. Thirteen of the debtors were management companies servicing the forty-four operating currency exchanges.

On February 4, 1983, after the appointment of the Director's receiver, but prior to the commencement of the Title 11 cases, the Attorney General for the State of Illinois filed thirty-three complaints in chancery in the Circuit Court of Cook County Illinois for the orderly liquidation of each of the Illinois debtor exchanges (Supp. to record admitted Jan. 24, 1984, D.Tr. 19-20). These complaints were apparently filed under authority of section 15.1a of the Community Currency Exchange Act, *Ill. Rev. Stat.* ch. 17 para. 4826 (C-25).

REASONS FOR DENYING THE REQUEST FOR ISSUANCE OF A WRIT OF CERTIORARI

Introduction

The primary issue presented by the Director in the trial court and the two appellate courts which have already reviewed this case is whether a community currency exchange, engaged in the business of cashing checks and selling money orders, is prohibited from being a debtor under Chapter 11 of the Bankruptcy Code by operation of section 109(b)(2) of the code, (11 U.S.C. section 109(b)(2)). This was the first substantive issue addressed by both the district court and the court of appeals, and the issue given the most analysis and consideration by each of those appellate tribunals. Both the District Court for the Northern District of Illinois and the Court of Appeals for the Seventh Circuit had little difficulty in finding that a community currency exchange was not within the class of enterprises excluded from bankruptcy relief by section 109.

The Director, in his statement of questions presented for review, appears to have abandoned his earlier theory that a community currency exchange falls within the excluded class. Rather, he seeks review of a different question which he raised in the lower courts. That is, whether the bankruptcy court was compelled to abstain from taking jurisdiction over a properly filed bankruptcy case on the basis of comity or Illinois public policy as it relates to these currency exchange debtors. Even though the Director, in his petition, raises two issues for review, one relating to the filing of the cases and the other to the receiver's status as a "custodian", he makes essentially

the same comity or public policy argument as the basis for issuance of the writ as to each issue.

I. THE DECISION OF THE SEVENTH CIRCUIT COURT OF APPEALS IS CORRECT AND NOT SUBJECT TO SERIOUS DISPUTE.

The specific question of whether a community currency exchange, licensed by and operating in Illinois, is precluded from bankruptcy protection by section 109(b)(2) may be novel. However, the Seventh Circuit and the district court were able to use long standing precedents, well established legal principles and clear statutory language to support the finding that a currency exchange is eligible to file a petition for relief under the Bankruptcy Code. The court of appeals broke no new ground either in its treatment of applicable decisional law or its construction of the Bankruptcy Code and its predecessor, the Bankruptcy Act (11 U.S.C. sections 1 et seq. repealed 1979). The court's refusal to accept the Director's public policy argument was equally well-founded. Indeed by focusing the issues to those dealing with abstention, the Director impliedly concedes the correctness of the holding of the Seventh Circuit Court of Appeals that a community currency exchange is not within the class of enterprises excluded from bankruptcy relief by section 109(b)(2).

The argument that the bankruptcy court should have abstained from hearing this title 11 case over which federal bankruptcy jurisdiction otherwise exists can only be premised on two possible bases:

a) abstention under section 305 of the Bankruptcy Code or;

b) abstention under the doctrine of *Burford* v. *Sun Oil Co.*, 319 U.S. 315 (1943).

A bankruptcy court's decision not to abstain under section 305 is not subject to further review at any time. See section 305(c) of the Bankruptcy Code (11 U.S.C. section 305(c)), *In re Covey*, 650 F. 2d 877, 880 (7th cir. 1981) and the opinion of the Court of Appeals at A-25 (762 F.2d at 555).

The *Burford* doctrine simply does not have applicability to bankruptcy cases where Congress has determined what business enterprises are entitled to liquidate or reorganize under the Bankruptcy Code. Federal bankruptcy legislation has preempted the field as to those enterprises which Congress has determined may avail themselves of bankruptcy. The existence of alternate or even adequate state liquidation or regulatory procedures, which might justify a *Burford* type abstention in non bankruptcy situations, has no applicability in the area of bankruptcy.

II. THE DECISION OF THE SEVENTH CIRCUIT COURT OF APPEALS IS NOT IN CONFLICT WITH ANY DECISION OF ANOTHER COURT OF APPEALS ON ANY ISSUE PRESENTED BEFORE IT OR OVER WHICH FURTHER REVIEW IS SOUGHT.

There is no conflict among the courts of appeals on any substantial issue arising in this case or presented for further review. The Director is in error when he suggests that such a conflict exists by citing *Israel-British Bank (London) Ltd.* v. *The Fed. Dep. Ins. Corp.*, 536 F.2d 509 (2nd cir. 1976) as holding the existence of state statutes for liquidating or regulating a business provides a sufficient basis for compelling abstention over an other-

wise proper bankruptcy case. First, the issue before the court in *Israel British Bank* was whether a foreign corporation engaging in banking in London, but not in the United States, was a "banking corporation" excluded from bankruptcy under section 4 of the Bankruptcy Act (11 U.S.C. section 22, repealed 1979), predecessor to section 109 of the Bankruptcy Code. The Court of Appeals for the Second Circuit *held* the enterprise was not a banking corporation precluded from bankruptcy relief. The issue presented for review in this case, as fashioned by the Director himself, is whether abstention from bankruptcy should be required because of the nature of the state regulation of community currency exchanges. The issue presented to the Second Circuit Court of Appeals in *Israel British Bank* was not analogous, and the passage quoted by the Director at page 15 of his petition is clearly *dicta* taken out of context.

Similarly, the suggestion of a conflict among the circuits created by the Director's citation of *Woolsey* v. *Security Trust Co.*, 74 F.2d 334 (5th cir. 1935) and *First American Bank and Trust Co.* v. *George,* 540 F.2d 343 (8th cir.) cert denied 424 U.S. 1011 (1976) is misleading. Both decisions involved a determination of whether the business enterprise was a "banking corporation" excluded from bankruptcy under section 4 of Bankruptcy Act. Neither dealt with either unwarranted interference with state law or with abstention from taking bankruptcy jurisdiction over a business otherwise eligible for bankruptcy relief. In both cases, the business in question was clearly a bank as defined by applicable local statutes. Therefore, in each instance the bankruptcy petition was dismissed. Neither court even considered an expansion of the excluded class or abstention for reasons of comity of policy.

There is no conflict among the courts of appeals concerning the exclusions under Section 109 of the Bankruptcy Code or Section 4 of the prior Bankruptcy Act. Neither does the Seventh Circuit's refusal to compel abstention from a case involving a community currency exchange either chart new legal territory or create a conflict among the various courts of appeals. Accordingly, review by writ certiorari is unwarranted.

III. FURTHER REVIEW OF THE DECISION OF THE SEVENTH CIRCUIT COURT OF APPEALS WILL UNDERMINE RATHER THAN ADVANCE PRINCIPLES OF FDERALISM.

Contrary to the Director's arguments, discretionary review by a writ of certiorari will undermine principles of federalism rather than advance them. The Director is essentially asking this Court to judicially amend the Bankruptcy Code by either including a community currency exchange in the prohibited class or by creating authorization for a judicially created abstention doctrine where bankruptcy jurisdiction would otherwise exist. The power to enact uniform bankruptcy legislation is delegated to Congress under the United States Constitution, at article I, section 8, clause 4. Although Congress does not have to enact such legislation, once it does the federal statute preempts all state laws within the field by virtue of article VI, clause 2 of the United States Constitution, the so-called "Supremacy Clause".

The determination of the policies to be advanced by bankruptcy legislation and the selection of the persons or business eligible or to be excluded from bankruptcy relief is committed to the sole discretion of Congress. The cases cited by the Director, as well as the authorities

relied upon by the Seventh Circuit Court of Appeals, reveal that considerations of federalism and the existence of alternative liquidation procedures were considered by Congress in deciding which entities should be excluded from bankruptcy relief under Section 4 of the Bankruptcy Act and Section 109 of the Bankruptcy Code. It is not the function of the judiciary to alter or amend the Bankruptcy Code because the Director is dissatisfied with the scope of the exclusions of Section 109 or the nature of the abstention doctrine articulated in Section 305 of the Bankruptcy Code. Congress did not draft Section 109 or Section 305 in a manner calculated to invite judicial additions to the class of excluded enterprises or the circumstances under which abstention should be granted. It could have done so by invoking the drafting technique and rules of construction contained within the Bankruptcy Code itself. Under Section 102(3) of the Code, "the words 'includes' and 'including' are not limiting" (11 U.S.C. section 102(3)). Congress made the list of excluded entities and the circumstances under which abstention should be considered exhaustive rather than illustrative by not using the words "includes" or "including" in sections 109 and 305.

Acceptance of the position advocated by the Director will necessarily erode the constitutional mandate that Congress be vested with the authority to enact uniform bankruptcy legislation. When all the extraneous dressing is removed from the Director's argument, it boils down to the proposition that the several states, by enacting regulatory legislation over a class of business enterprises whose activity affects the public, can exempt those enterprises from seeking bankruptcy under Title 11 of the United States Code. The states have legitimate reasons

to regulate many types of business activities, and in fact do so. However, the existence of state regulatory statutes has never provided any court with a basis for depriving a business or person not otherwise statutorily excluded, from seeking bankruptcy relief. Indeed, some of the most heavily regulated enterprises are eligible for bankruptcy relief, despite the quasi-public nature of their activities *e.g.* municipalities, railroads, utilities, common carriers, oil companies, securities and commodities dealers.

The possible erosion of the mandate that Congress enact uniform bankruptcy legislation is pointed out by the facts of this case. Cash Currency is one of fifty-seven related debtors who filed for reorganization under Chapter 11. All of the debtors had common shareholders and the cases are being jointly administered in the Bankruptcy Court for the Northern District of Illinois. Among the debtors are companies which operate community currency exchanges in Missouri, Wisconsin, Michigan, Indiana, and the District of Columbia. Using the Director's rationale, it would be possible that the Illinois currency exchanges would be precluded from bankruptcy relief, while the non-Illinois exchanges, located in states which have not articulated the same policies as Illinois, would not be judicially excluded. Not only would the result be absurd in this case, the effect would be a chaotic and unworkable bankruptcy system as it relates to national and interstate businesses.

IV. ALLOWING CASH CURRENCY EXCHANGE INC., TO LIQUIDATE OR REORGANIZE IN BANKRUPTCY DOES NOT NEGATIVELY AFFECT THE POLICIES THE DIRECTOR ARTICULATES AS A BASIS FOR GRANTING THE WRIT.

The Director emphasizes the state's public interest in regulating the operation of community currency exchanges as the primary basis upon which he asks this Court to grant further review by a writ of certiorari. However, the Director's premise does not stand up under scrutiny. The Seventh Circuit Court of Appeals, at A-16, 762 F.2d at 551, aptly noted that Sections 15-15.1(e) of the Community Currency Exchange Act (*Ill. Rev. Stat.* Chapter 17 paras. 4825-4830), governing receiverships, is a liquidation statute concerned with creditors' rights. This portion of the Community Currency Exchange Act, under which the Director's receiver, Donald Shine, was appointed is not designed to implement or vindicate the public interest or policies upon which the Director premises his request for issuance of the writ. The capital, bonding, and operating requirements imposed on community currency exchanges by the state are dealt with in other portions of the Act and are not impaired by a licensee's filing of a Chapter 11 bankruptcy reorganization. Only the liquidation/receivership portion of the Community Currency Exchange Act is affected by the intervention of bankruptcy. State and federal receiverships are routinely interrupted or stayed by a subsequent bankruptcy petition.

Further, the Community Currency Exchange Act in general and the receivership statute (Sections 15-15.1(e)) in particular do not provide a mechanism for reorganization. The receiver takes over the assets of the business and can either return them to the licensee or institute a

judicial proceeding for liquidation. In this case he caused liquidation proceedings to be instituted in the Circuit Court of Cook County. There is no invasion of the legitimate police or regulatory power of the state by allowing a community currency exchange to reorganize or liquidate in bankruptcy. A debtor-in-possession is subject to all of the applicable statutes and regulations affecting community currency exchanges in their business operations. The Director does not suggest anything to the contrary. It is difficult to see exactly how a bankruptcy petition impinges upon any public policy articulated by the Director in his petition or set forth in the Community Currency Exchange Act.

V. FURTHER REVIEW IS UNWARRANTED SINCE THE CONSEQUENCES OF THE RELIEF REQUESTED BY THE DIRECTOR WILL RENDER THE BANKRUPTCY SYSTEM UNWORKABLE.

If review is granted over this matter, the only way this Court will be able to grant the Director his relief is to establish a new abstention doctrine by which the judiciary may allow abstention for reasons not articulated in the Bankruptcy Code. The Director advances several purported state policies as a justification for seeking abstention in this instance. However, no workable standard could ever be adopted so that lower courts would be properly guided on when to authorize or compel abstention. The several states can have differing policies and regulatory schemes for the same business activity or enterprise. Does that mean that the accident of where a business happens to be incorporated or have its principal place of business will determine whether it can seek federal bankruptcy protection? What would happen in the

case of truly regional or national business enterprises, such as common carriers? An enterprise can affect the public interest of the state even if it neither incorporates nor establishes its principal place of business within the state.

Equally as important, the business enterprises themselves will have no way of predicting whether they can reorganize or liquidate under the provisions of the Bankruptcy Code. Every business bankruptcy filing will be subject to an attack that abstention is mandated by a purported infringement upon a state's public policy. Such a result would be unworkable, both from the point of view of persons or businesses who will avail themselves of bankruptcy protection and the judiciary which must interpret the Bankruptcy Code and resolve these jurisdictional issues. This Court should exercise its discretion by refusing to grant the writ, which would certainly invite a chaotic result. Rather, the well founded decision of the Court of Appeals for the Seventh Circuit should not be subjected to further review.

VI. THE DIRECTOR'S REQUEST FOR THE WRIT IS PREMISED UPON ASSUMPTIONS AND GENERALIZATIONS FOR WHICH NO AUTHORITY IS CITED.

The Director's petition contains numerous assumptions and assertions about the nature of community currency exchanges, their clientele, their social function and their place in the community of financial institutions. None of those assumptions or generalizations are supported either by the record or a citation to an authority outside of the record. Neither this respondent nor the Court has any basis for determining whether the socio-economic

generalizations relied upon by the Director are true or verifiable. Neither can we know upon what facts such generalizations are based. Cash Currency Exchange, Inc., suggests that this Court ignore these totally unsupported assertions and focus its analysis upon the legal principles involved and the consequences of further review.

CONCLUSION

There is no conflict among the various courts of appeals as to any issue presented for review. The Director does not suggest that the Seventh Circuit Court of Appeals decided any issue of state law in conflict with the Illinois Supreme Court. The primary issues of federal law resolved by the Seventh Circuit in its decision relate to:

1) who may be a debtor under the bankruptcy code;
2) whether the Director's receiver is a custodian; and,
3) whether, after finding that a community currency exchange may be a debtor, abstention is warranted.

When deciding each question, the Seventh Circuit Court of Appeals has resolved the issue consistent with all existing authority. Given the uncertainty and perils neces-

sarily attendant upon granting the relief requested by the Director, this Court should exercise its discretion in not granting the writ of certiorari.

Respectfully submitted,

ABRAHAM BRUSTEIN
NICHOLAS G. DOZORYST II*
Attorneys for Respondent
CASH CURRENCY EXCHANGE, INC.

Of Counsel:
NICHOLAS G. DOZORYST II
DOZORYST, BRUSTEIN, NEUMAN & MARKS
53 West Jackson Blvd., Suite 1250
Chicago, Illinois 60604
(312) 922-4910

* Counsel of Record

APPENDIX

7287A

NO. 85-305

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

MICHAEL E. FRYZEL, Director Department of Financial Institutions,

Petitioner,

v.

CASH CURRENCY EXCHANGE, INC., et al.,

Respondents.

APPENDIX OF CASH CURRENCY EXCHANGE, INC.

UNITED STATES CONSTITUTION
ARTICLE I, SECTION 8, CL. 4

The Congress shall have Power To . . . to establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States.

UNITED STATES CONSTITUTION
ARTICLE VI, CL. 2

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

11 U.S.C. SECTION 102(3)

In this title—

(a) "includes" and "including" are not limiting.

11 U.S.C. SECTION 109

(a) Notwithstanding any other provision of this section, only a person that resides or has a domicile, a place of business, or property in the United States, or a municipality, may be a debtor under this title [11 U.S.C.S. sections 101 et seq.].

(b) A person may be a debtor under Chapter 7 of this title [11 U.S.C.S. sections 701 et seq.] only if such person is not—

(1) a railroad;

(2) a domestic insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, credit union, or industrial bank or similar institution which is an insured bank as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)) [12 USCS section 1813(h)]; or

(3) a foreign insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, or credit union, engaged in such business in the United States.

(c) An entity may be a debtor under chapter 9 of this title [11 USCS sections 901 et seq.] if and only if such entity—

(1) is a municipality;

(2) is generally authorized to be a debtor under such chapter by State law, or by a governmental officer or organization empowered by State law

to authorize such entity to be a debtor under such chapter 11 USCS section 901 et seq.;

(3) is insolvent or unable to meet such entity's debts as such debts mature;

(4) desires to effect a plan to adjust such debts; and

(5) (A) has obtained the agreement of creditors holding at least a majority in amount of the claims of each class that such entity intends to impair under a plan in a case under such chapter 11 USCS section 901 et seq.;

(B) has negotiated in good faith with creditors and has failed to obtain the agreement of creditors holding at least a majority in amount of the claims of each class that such entity intends to impair under a plan in a case under chapter 11 USCS section 901 et seq.;

(C) is unable to negotiate with creditors because such negotiation is impracticable; or

(D) reasonably believes that a creditor may attempt to obtain a transfer that is avoidable under section 547 of this title [11 USCS section 547].

(d) Only a person that may be a debtor under chapter 7 of this title [11 USCS section 701 et seq.], except a stockbroker or a commodity broker, and a railroad may be a debtor under chapter 11 of this title [11 USCS sections 1101 et seq.].

(e) Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $100,000 and noncontingent, liquidated, secured debts of less than $350,000, or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than $100,000 and noncontingent, liquidated, secured debts of less than $350,000 may be a debtor under chapter 13 of this title [11 USCS sections 1301 et seq.].

(f) Notwithstanding any other provision of this section, no individual may be a debtor under this title [11 USCS sections 1101 et seq.] who has been a debtor in a case pending under this title [11 USCS section 101 et seq.] at any time in the preceding 180 days if—

(1) the case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case; or

(2) the debtor requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay provided by section 362 of this title [11 USCS section 362].

(Nov. 6, 1978, P. L. 95-598, Title I, section 101, 92 Stat. 2557; Oct. 15, 1982, P. L. 97-320, Title VII, section 703(d), 96 Stat. 1539; July 10, 1984, P. L. 98-353, Title III, Subtitle A, section 301, Subtitle H, section 425, 98 Stat. 352, 369.)

11 U.S.C. SECTION 305

(a) The court, after notice and a hearing, may dismiss a case under this title, or may suspend all proceedings in a case under this title, at any time if—

(1) the interests of creditors and the debtor would be better served by such dismissal or suspension; or

(2) (A) there is pending a foreign proceeding; and
(B) the factors specified in section 304(c) of this title warrant such dismissal or suspension.

(b) A foreign representative may seek dismissal or suspension under subsection (a)(2) of this section.

(c) An order under subsection (a) of this section dismissing a case or suspending all proceedings in a case, or a decision not so to dismiss or suspend, is not reviewable by appeal or otherwise.